

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

VS.

AND

Docket No. 176,183

## ORDER

Claimant appeals from the preliminary hearing Order of July 23, 1996, wherein Assistant Director Brad Avery denied claimant benefits finding that there was insufficient evidence to establish claimant's left shoulder condition is a natural and probable consequence of the rotator cuff tear in claimant's right shoulder.

## ISSUES

- (1) Whether the Assistant Director erred in denying medical expense to claimant for his left shoulder injury.
- (2) Whether claimant's left shoulder injury arose out of and in the course of his employment and is a natural and probable consequence of the injury to claimant's right shoulder.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds, for preliminary hearing purposes, the Order of Assistant Director Avery should be affirmed.

Claimant suffered injury to his right shoulder in 1992 resulting in a rotator cuff tear necessitating two surgeries. Beginning in 1994, claimant began complaining of symptoms in his left shoulder, not originally injured in 1992. Claimant's left shoulder complaints appeared to be

progressive and, in 1995, he was ultimately diagnosed as having a partial tear in the left rotator cuff. The medical evidence is somewhat contradictory in that Dr. Michael T. McCoy and Dr. Vito J. Carabetta opined that the rotator cuff tear in claimant's left shoulder did not result from the overcompensation to the right. Dr. Carabetta went on to state that an actual rotator cuff tear would require a specific injury. Dr. Carabetta did state that the overcompensation would cause irritation and discomfort.

Dr. Deborah T. Mowery stated emphatically that claimant's left shoulder condition was not, in her opinion, related to his previous right shoulder problems from the 1992 injury.

In proceedings under the Workers Compensation Act, it is the burden of claimant to prove the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 44-501, as amended, and K.S.A. 44-508(n) as amended.

It is well settled in this state that an accidental injury is compensable when the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction. See Harris v. Cessna Aircraft Co., 9 Kan. App. 2d 334, 678 P.2d 178 (1984); Chinn v. Gay & Taylor, Inc., 219 Kan. 196, 547 P.2d 751 (1976). In order for claimant to be awarded compensation he must establish that he sustained accidental injury arising out of and in the course of his employment in order for his condition to be compensable. Claimant argues appropriately that when a primary injury under the Workers Compensation Act arises out of and in the course of a worker's employment, every natural consequence that flows from that injury is compensable if it is a direct and natural result of the primary injury. Gillig v. Cities Service Gas Co., 222 Kan. 369, 564 P.2d 548 (1977). However, the Appeals Board cannot find in the record sufficient evidence to show that claimant's left shoulder is a natural and probable consequence of the right shoulder injury.

WHEREFORE, it is the finding, decision and order of the Appeals Board that the Order of Assistant Director Brad Avery dated July 23, 1996, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1996.

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BOARD MEMBER

c: Derek J. Shafer, Topeka, KS  
Ronald J. Laskowski, Topeka, KS  
Brad Avery, Assistant Director  
Philip S. Harness, Director